

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
 v.) 3:07cr146-MHT
)
 ROGER LADRELL McCULLOUGH)

RESPONSE TO COURTS ORDER REGARDING
DEFENDANT'S OBJECTION TO THE PRESENTENCE REPORT

NOW the United States of America, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and files the above-captioned response to the Court's order (Doc. 39) regarding the defendant's objection to the presentence report as follows:

1. Defendant objects to paragraph 38 of the presentence report. Specifically, the defendant states that ...The presentence report does not specifically state the adjudication, if any, in the Circuit Court of Lee County. Because appeals from district court to circuit court in Alabama are *de novo*, if there is no adjudication of guilt after the appeal, no points should be assigned."

2. On April 25, 2000, defendant was sentenced for carrying a pistol without a license and resisting arrest in the Lee County District Court, case numbers DC 00 1087 and 1088. Defendant appealed his conviction to the Lee County Circuit Court on April 26, 2000. His appeals were dismissed on September 15, 2000, case number CC 00 479 and 480. Upon dismissal, the cases were remanded to the district court for imposition of the sentence that was imposed on April 25, 2000.

3. Because the defendant failed to appear for the imposition of his sentence,

the court issued an alias warrant. As of the writing of the presentence report, the warrant remained outstanding.

4. Defendant first contends that because he appealed the district court sentence "de novo," there is no adjudication of guilt and, thus, no criminal history points should be assigned. "The circuit court shall have appellate jurisdiction of civil, criminal, and juvenile cases in district court....Appeals to the circuit court shall be tried de novo, with or without a jury, as provided by law." Ala. Code 1975 § 12-11-30. While the defendant's argument may prove persuasive if the de novo appeal was not dismissed, the de novo appeal was dismissed and remanded to the district court for the defendant to start serving his sentence. Thus, the de novo appeal has no bearing, the district court convictions should stand, and the defendant should receive the two criminal history points.

5. Defendant has further noted that he was in the courthouse dealing with other criminal offenses while the alias warrant was outstanding and he was never arrested. He insinuates that because he was in the courthouse and was not arrested, the warrant was either not in effect or not serious enough to mandate his arrest. While the government finds it curious that the defendant was never arrested on the alias warrant, it does not detract from the fact that the warrant was issued and in place as a result of his failing to begin serving his sentence.

Respectfully submitted, this the 19th day of March, 2008.

LEURA G. CANARY
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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2008, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following: Thomas Goggans.

Respectfully submitted,

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